

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

United States District Court
Southern District of Texas
FILED

OCT 21 2016

David J. Bradley, Clerk of Court

United States of America

v.

Mark Adair

Case No.

H16-1555M

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of Dec. 16, 2015-Feb. 26, 2016 in the county of Harris in the
Southern District of Texas, the defendant(s) violated:

Code Section

Offense Description

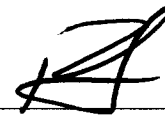
18 U.S.C. § 2252A (a)(2)(B)

18 U.S.C. § 2252A (a)(5)(B)

Any person who knowingly receives or distributes any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer. Any person who knowingly possesses any material that contains an image of child pornography that has been mailed or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer.

This criminal complaint is based on these facts:

See attached Affidavit.

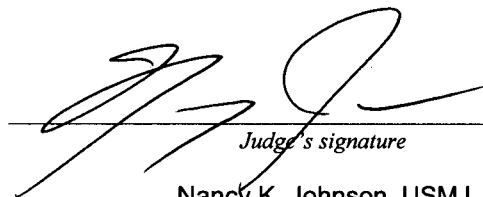
☒ Continued on the attached sheet.

Complainant's signature

Robert J. Guerra, FBI Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 10-21-16City and state: Houston, Texas

Judge's signature

Nancy K. Johnson, USMJ

Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Robert J. Guerra, being duly sworn, hereby depose and state the following:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been so employed since November 2005. I am charged with the duty of investigating violations of the laws of the United States, collecting evidence in cases in which the United States is or may be a party in interest and performing other duties imposed by law. During my assignment with the FBI I have participated in the execution of search warrants for documents and other evidence, including computers and electronic media, in cases involving child pornography and the sexual exploitation of children. I have investigated many cases involving child pornography and the sexual exploitation of children. I have also participated in various FBI mandated and volunteer training for the investigation and enforcement of federal child pornography laws in which computers were used as the means for receiving, transmitting and storing child pornography as defined in Title 18, United States Code, Section 2256.
2. This affidavit is submitted for the limited purpose of establishing probable cause in support of the attached Complaint and therefore contains only a summary of the relevant facts. I have not included each and every fact known by me concerning the individuals and events described herein. The information contained in this affidavit is based on my firsthand knowledge as well as information obtained through witness interviews conducted by me or other Law Enforcement Officers or Special Agents of the FBI and a review of various records.

3. A growing phenomenon on the Internet is peer to peer file sharing (hereinafter, "P2P").
P2P file sharing is a method of communication available to Internet users through the use of special software. The software is designed to allow users to trade digital files through a worldwide network that is formed by linking computers together.
4. On or about December 16, 2015, Federal Bureau of Investigation (FBI) Special Agent Robert Guerra, your Affiant, using a computer connected to the Internet and utilizing a law enforcement tool that allows single-source downloads from the BitTorrent P2P network, conducted an investigation into the sharing of child pornography through that network.
5. SA Guerra identified a computer on the BitTorrent P2P file sharing network with the IP address of 98.201.81.135 as a potential download candidate (source) for several files of investigative interest. SA Guerra directed his investigation to this computer at IP address 98.201.81.135 as it had been detected as being associated with investigative files of interest by investigators conducting keyword searches or hash value searches for files related to child exploitation material including child pornography on the BitTorrent network.
6. On December 16, 2015 between the times of 03:58:02 (GMT -06:00) and 07:05:15 (GMT -06:00), SA Guerra successfully completed the download of 35 video files via single source download, which the computer at IP address 98.201.81.135 was making available. Following the downloads, your Affiant viewed the files downloaded from the computer at IP address 98.201.81.135 and determined that over 25 video files depicted child pornography as defined by Title 18 United States Code 2256. Below is a

description of 5 of the downloaded files that meet the federal definition of child pornography and their respective hash value:

- a) **Lols Only Polina 001.avi** – This is video file that is 5 minutes and 2 seconds in length depicting an underage female, who appears to be under the age of 16, engaging in various poses where her genitals are exposed in a lewd and lascivious manner. The child can also be seen rubbing her hands on her vagina during several frames of the video.
- b) **Lols Only Polina 008.avi** – This is video file that is 4 minutes and 51 seconds in length depicting the same underage female described above, engaging in various poses where her genitals are exposed in a lewd and lascivious manner. The child can also be seen rubbing her hands on her vagina during several frames of the video.
- c) **Lols Only Polina 015.avi** – This is video file that is 5 minutes and 3 seconds in length depicting the same underage female described above, engaging in various poses where her genitals are exposed in a lewd and lascivious manner. The child can also be seen rubbing her hands on her vagina during several frames of the video.
- d) **Lols Only Polina 019.avi** – This is video file that is 4 minutes and 59 seconds in length depicting the same underage female described above, engaging in various poses where her genitals are exposed in a lewd and lascivious manner. The child can also be seen rubbing her hands on her vagina during several frames of the video.
- e) **Lols Only Polina 032.avi** – This is video file that is 5 minutes and 1 seconds in length depicting the same underage female described above, engaging in various poses where her genitals are exposed in a lewd and lascivious manner. The child can also be seen rubbing her hands on her vagina during several frames of the video.

7. SA Guerra determined that the IP address 98.201.81.135 is registered to the Internet Service Provider (ISP) Comcast Communications. On January 27, 2016, Comcast Communications responded to an administrative subpoena and provided account information for IP address 98.201.81.135 assigned on December 16, 2015 between the times of 03:58:02 (GMT -06:00) and 07:05:15 (GMT -06:00), IP address 98.201.81.135

was assigned to an account registered to Mark Adair, 5603 Summerfield Lane, Spring, Texas. The account in question was regarded as being active since of August 12, 2013.

8. On February 26, 2016, FBI Houston executed a federal search warrant at the residence located at 5603 Summerfield Lane, Spring, Texas. Upon the execution of said search warrant, Mark Adair was identified and subsequently interviewed by your Affiant and SA Ryan J. Shultz. After being advised of his *Miranda Rights*, Adair agreed to make a statement.
9. Mark Adair, hereinafter referred to as "Adair", advised the interviewing agents that he had utilized the Peer-To-Peer program uTorrent to download child pornography. Adair stated agents would find child pornography on his laptop as well as two flash drives located inside his residence. Adair stated he would download child pornography to his laptop computer, move the child pornography files to the flash drives, then delete the files from his laptop. Adair admitted to masturbating while watching child pornography on at least one occasion. Adair stated he had been downloaded child pornography as recently as the day before or possibly even the same morning agents arrived at his residence.
10. Adair acknowledged an understanding of peer-to-peer programs with regards to having to conduct keyword searches for a topic of interest and then having to actively select and approve the desired files for download and receipt. Adair also acknowledged an understanding that peer-to-peer programs are file sharing programs that are based on users sharing files with other users. Although Adair attempted to take steps to prohibit

his uTorrent program from sharing child pornography files, he was aware that by using the program, others were able to download child pornography from his shared folder.

11. SA Guerra presented Adair with the option to review screen shots which contained several still images of the videos (as described in paragraph 6) that SA Guerra had downloaded from a computer connected to the IP address registered to Mark Adair. Adair agreed to review the screen shots and subsequently stated that he recognized at least 5 of the still images as child pornography he had previously downloaded, viewed and distributed from his laptop computer while connected to the Internet via the peer to peer program, uTorrent.

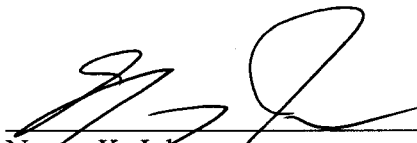
CONCLUSION

12. Based on all information set forth above, your Affiant believes there is probable cause to believe that from on or about December 16, 2015, through on or about February 26, 2016, Mark Adair, was in violation of Title 18 U.S.C. § 2252A (a)(2)(B) and 2252A (a)(5)(B)- the distribution, receipt and possession of child pornography.



Robert J. Guerra, SA, FBI

Subscribed and sworn before me this 21st day of October 2016.


Nancy K. Johnson
United States Magistrate Judge